

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.:
v.	)	
	)	
UNIVERSAL SHIPPERS ASSOCIATION,	)	
INC.,	)	
	)	
Defendant.	)	
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**FINAL JUDGMENT**

Plaintiff, United States of America, filed its Complaint on August 22, 1996. United States of America and Universal Shippers Association, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against nor an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

**I.**  
**JURISDICTION**

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

**II.**  
**DEFINITIONS**

As used herein, the term:

(A) "automatic rate differential clause" means any provision in a contract the defendant has with an ocean common carrier or conference that requires the ocean common carrier or conference to maintain a differential in rates, whether expressed as a percentage or as a specific amount, between rates charged by the ocean common carrier or conference to the defendant under the contract and rates charged by the ocean common carrier or conference to any other shipper of the same or competing commodities for lesser volumes.

(B) "contract" means any contract for the provision of ocean liner transportation services, including a service contract. "Contract" does not include any contract for charter services or for ocean common carriage provided at a tariff rate filed pursuant to 46 U.S.C. App. § 1707.

(C) "conference" means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff in accordance with 46 U.S.C. App. § 1701, et seq.

(D) "defendant" means Universal Shippers Association, Inc., each of its predecessors, successors, divisions, and subsidiaries, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former employees, directors, officers, agents, consultants or other persons acting for or on behalf of any of them.

(E) "service contract" means any contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level.

(F) "shipper" means the owner of cargo transported or the person for whose account the ocean transportation of cargo is provided or the person to whom delivery of cargo is made; "shipper" also means any group of shippers, including a shippers' association.

(G) "shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

**III.**  
**APPLICABILITY**

(A) This Final Judgment applies to the defendant, and to each of its subsidiaries, successors, assigns, officers, directors, employees, and agents.

**IV.**  
**PROHIBITED CONDUCT**

Defendant is restrained and enjoined from maintaining, adopting, agreeing to, abiding by, or enforcing an automatic rate differential clause in any contract.

**V.**  
**NULLIFICATION**

Any automatic rate differential clause in any of defendant's contracts shall be null and void by virtue of this Final Judgment. Promptly upon entry of this Final Judgment, defendant shall notify in writing each ocean common carrier or conference with whom defendant has a contract containing an automatic rate differential clause that this Final Judgment prohibits such clause.

**VI.**  
**COMPLIANCE MEASURES**

Defendant is ordered:

(A) to send, promptly upon entry of this Final Judgment, a copy of this Final Judgment to each ocean common carrier or conference whose contract with defendant contains an automatic rate differential clause;

(B) to provide a copy of this Final Judgment to each director and officer at the time they take office, and to those employees that negotiate contracts, and to maintain a record or log of signatures of those persons that they received, read, understand to the best of their ability, and agree to abide by this Final Judgment and that they have been advised and understand that noncompliance with the Final Judgment may result in disciplinary measures and also may result in conviction of the person for criminal contempt of court;

(C) to maintain an antitrust compliance program which shall include an annual briefing of the defendant's Board of Directors, officers and non-clerical employees on this Final Judgment and the antitrust laws.

## **VII.**

### **PLAINTIFF ACCESS**

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access during the defendant's office hours to inspect and copy all documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII. shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

### **VIII.**

#### **FURTHER ELEMENTS OF THE FINAL JUDGMENT**

(A) This Final Judgment shall expire ten years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

DATED: 11/6/96

\_\_\_\_\_/s/\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE